

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: STEVEN W. OEFFNER,
JANEL I. OEFFNER,

BKY. No.: 04-40068
Chapter 13

Debtors.

NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY

TO: STEVEN W. OEFFNER, JANEL I. OEFFNER AND THEIR
ATTORNEY, ROBERT J. EVERHART, ATTORNEY AT LAW, P.O.
BOX 120534, NEW BRIGHTON, MN 55112.

1. Mortgage Electronic Registration Systems, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004 at 2:00 P.M. in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota, or as soon as counsel may be heard before The Honorable Robert J. Kressel, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and

1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on January 7, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignments of mortgage, copies of which are attached hereto as Exhibits A, B, & C, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the proposed Chapter 13 Plan re-scheduled for confirmation on September 16, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtors are in default on said payments from May 25, 2004 to date in the amount of \$397.32, plus post-petition late charges and inspection fees.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d),

granting relief from the automatic stay with respect to the real property securing the
Movant's claims to permit the Movant to foreclose its security interest, or in the
alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 20, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0417)

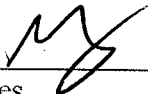
THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 20, 2004

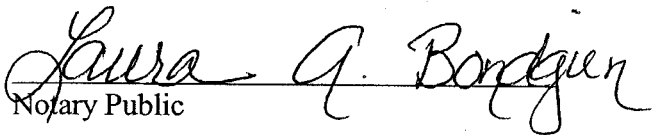
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

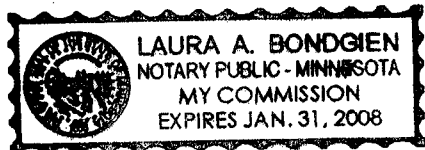
By: 
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

20th day of September, 2004.


Notary Public



90

7542098

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED AND DE
RECORDED ON
2001 SEP 17 AM 8:42
7542098
AS DOCUMENT
CO. REC.
ST. DEPUTY

MORTGAGE

Loan Number 2280-01074807-296

THIS MORTGAGE is made this 20TH day of JULY, 2001, between the Mortgagor, STEVE OEFFNER and JANEL OEFFNER, HUSBAND AND WIFE (herein "Borrower"), and the Mortgagee, Household Bank, f.a.b., a corporation organized and existing under the laws of NEVADA, whose address is 1111 TOWN CENTER DRIVE, LAS VEGAS, NEVADA 89144 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$38,800.00, which indebtedness is evidenced by Borrower's note dated JULY 20, 2001 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on JULY 15, 2016;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby grant and convey to Lender, with power of sale, the following described property located in the County of HENNEPIN, State of Minnesota:
SEE ATTACHED SCHEDULE "A"

NREIS
Box 323

John Co. 197
JRWCE:18
08/20/2001
Filed SEP 11

Tax statements for the real property described in this instrument should be sent to:

which has the address of 14055 MALLARD DRIVE ROGERS
Minnesota 55374 (herein "Property Address"); (City)
(Zip Code)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

MINNESOTA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC MODIFIED INSTRUMENT

Form 3824 (page 1 of 3 pages)
80-00

LEGAL DESCRIPTION:

LOT 13, BLOCK 4, MALLARD ESTATES, HENNEPIN COUNTY, MINNESOTA.

ABSTRACT PROPERTY.

18

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.
[Check applicable box(es)]

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Other(s) [specify] | | |

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

STEVE OEFFNER (Seal)
Borrower

JANEL OEFFNER (Seal)
Borrower

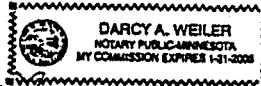
(Seal)
Borrower

(Seal)
Borrower

STATE OF MINNESOTA, HENNEPIN

County ss:

The foregoing instrument was acknowledged before me this JULY 20, 2001
by STEVE OEFFNER and JANEL OEFFNER, HUSBAND AND WIFE.



My Commission Expires:

Notary Public: *Darcy A. Weiler*

This instrument was prepared by Decision One Mortgage Company, LLC
[Name]
of Park Place West, 6465 Wayzata Blvd., Suite 970, St. Louis Park, Minnesota.
[Address]

[Space Below This Line Reserved For Lender and Recorder]

When Recorded Mail To:

Decision One Mortgage Company, LLC
Agent for Household Bank, f.s.b.
6060 J.A. Jones Drive, Suite 800
Charlotte, North Carolina 28287

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

RECORDED IN FB AND OR

2002 MAR -6 AM 9: 58

7669717

7669717

DEPUTY

Assignment Of Mortgage

(reserved for recording data)

Date: 14 AUG 2001

FOR VALUABLE CONSIDERATION, Household Bank, f.s.b.

a corporation organized and existing under the laws of Nevada
Assignor (whether one or more), hereby sells, assigns and transfers to
DECISION ONE MORTGAGE COMPANY, LLC
Assignee (whether one or more), the Assignor's interest in the Mortgage dated JULY 20, 2001,
executed by STEVE OEFFNER and JANEL OEFFNER, HUSBAND AND WIFE, as Mortgagor, to Household Bank,
f.s.b., as Mortgagee, and filed for record 9-17-2001, as Document Number
7542098 (or in Book of Page), in the
Office of the (County Recorder) (Registrar of Titles) of HENNEPIN County, Minnesota, together with all right and
interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its
successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of
THIRTY-EIGHT THOUSAND EIGHT HUNDRED AND 00/100ths DOLLARS, with interest thereon from
7-20-2001, and that Assignor has good right to sell, assign and transfer the same.

ASSIGNOR HOUSEHOLD BANK, f.s.b.



By M. Mitchell
Is Vice President M. MITCHELL
By M. Finney
Is Asst. Secretary M. FINNEY

North Carolina
State of NEVADA, County of mecklenburg 14

AUG 2001

This instrument was acknowledged before me on
M. MITCHELL as Vice President of HOUSEHOLD BANK, F.S.B. by

My commission expires:

Notary Public

When Recorded Return to:

Decision One Mortgage Company, LLC
Agent for Household Bank, f.s.b.
6060 J.A. Jones Drive, Suite 800
Charlotte, North Carolina 28257

Loan Number: 2280-01074807-296

THIS INSTRUMENT WAS DRAWN BY NAME AND ADDRESS:

M. FINNEY
6080 J.A. JONES DRIVE
SUITE 850
CHARLOTTE, NC 28287

SUBMITAL FORM FOR SEAL, JOEUTER TITLE OR BANK



GMD 0547 (894)

(B)

2003 NOV 14 AM 8:07

DOCUMENT # 8224357

BY Michael K. Lundoff DEPUTY

8224357

This space for Recorder's Use Only

Document Prepared By:
Liz Pecoraro
When recorded return to:
Household Mortgage Service
577 Lamont Road
Elmhurst IL 60126
Wholesale Document Verification

Project #: d12mers
Loan #: 4544797
Investor Loan #:
Assignee Loan #:
Pool #:
PIN/Tax ID #:
Property Address:
14055 Mallard Drive
Rogers, Mi 55374

ASSIGNMENT OF MORTGAGE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Decision One Mortgage Comano, LLC., Corporation**, whose address is **6060 JA Jones Drive Charlotte, NC 28287**, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **Mortgage Electronic Registration Systems, Inc, Corporation**, whose address is **P.O. Box 2026 Flint, MI 48501-2026**, the following described mortgage (the "Mortgage"), together with the certain promissory note(s) described therein, (the "Note[s]"), together with all rights therein and thereto, all liens created or secured thereby, and any and all interest due or to become due thereon.

State of Recordation: Minnesota Recording Jurisdiction: HENNEPIN-A
Recording Book: Page: Document No.: 7542098

Recording Book2: Page2: Document No. 2:
Recording Date: 09-17-2001 Recording Date

Original Mortgagor(s): **Steve Oeffner and Janel Oeffner, Husband and Wife**

Original Mortgagee: **Household Bank, f.s.b.**

Date of Mortgage: **07-20-2001**

Original Loan Amount: **\$38,000.00**

Microfilm Number:

Microfilm Number 2:

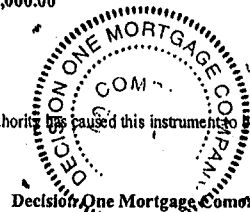
Comments: Min# 10004600004544797 0

Phone# 1-888-679-6377

Legal Description (If required see attached page)

IN WITNESS WHEREOF, the undersigned entity by its Board of Directors or by all due authority has caused this instrument to be executed by its duly authorized officer(s), representative(s) or Attorney-in-Fact this **10-06-2003**.

DATE OF TRANSFER: ---



Decision One Mortgage Comano, LLC.

Naomi Garner
Naomi Garner

William T. Weismann
William T. Weismann
Vice President

Devika Bustillos
Devika Bustillos

Andrew Matsuda
Andrew Matsuda
Assistant Secretary

State of IL
County of DuPage

On this date of **10-06-2003**, before me, the undersigned authority, a Notary Public duly commissioned, qualified and acting within and for the aforementioned State and County, personally appeared the within named **William T. Weismann** and **Andrew Matsuda**, known to me (or identified to me on the basis of satisfactory evidence) that they are the **Vice President** and **Assistant Secretary** respectively of **Decision One Mortgage Comano, LLC., Corporation**, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said corporation and that said corporation executed the same, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on the date hereinabove set forth.

Irma Saldano
Notary Public: **Irma Saldano**
My Commission Expires: **09-25-2005**



(C)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: STEVEN W. OEFFNER,
JANEL I. OEFFNER,

BKY. No.: 04-40068
Chapter 13

Debtors.

AFFIDAVIT OF MOVANT'S
VICE PRESIDENT

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc., in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtors.


2. That pursuant to the proposed Chapter 13 Plan re-scheduled for confirmation on September 16, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtors are in default on said payments from May 25, 2004 to date in the amount of \$397.32, plus post-petition late charges and inspection fees.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

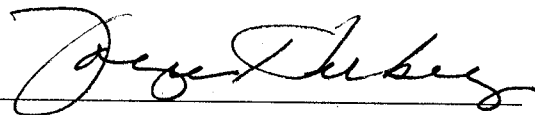
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

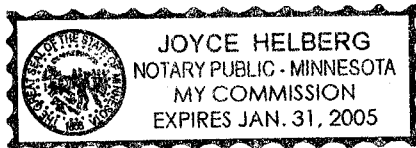
Dated: September 20, 2004

By: 
Scott Barnes
Vice President
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Subscribed to and sworn before me this

20th day of September, 2004.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: STEVEN W. OEFFNER,
JANEL I. OEFFNER,

BKY. No.: 04-40068
Chapter 13

Debtors.

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtors filed their petition herein on January 7, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Hennepin County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 13, Block 4, Mallard Estates.

The amount due under said mortgage loan was approximately \$45,000.00. Pursuant to the proposed Chapter 13 Plan re-scheduled for confirmation on September 16, 2004 the Debtors were to make all current monthly payments due on said mortgage outside of the plan. The Debtors are in default on said payments from May 25, 2004 to date in the amount of \$397.32, plus post-petition late charges and inspection fees.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtors’ inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors’ offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 20, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(F0417)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: STEVEN W. OEFFNER,
JANEL I. OEFFNER,

BKY. No.: 04-40068
Chapter 13

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2nd Floor, St. Paul, MN 55102-2227 declares that on September 21, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Jasmine Z. Keller
Trustee
12 S. 6th St., Ste. 310
Minneapolis, MN 55402

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Steven W. Oeffner
Janel I. Oeffner
14055 Mallard Drive
Rogers, MN 55374

Robert J. Everhart
Attorney at Law
P.O. Box 120534
New Brighton, MN 55112

Household Financial Services, Inc.
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

Countrywide Home Loans
c/o Wilford & Geske
7650 Currell Blvd., Ste. 300
Woodbury, MN 54125

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 21, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(F0417)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: STEVEN W. OEFFNER,
JANEL I. OEFFNER,

BKY. No.: 04-40068
Chapter 13

Debtors.

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 14, 2004 in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 13, Block 4, Mallard Estates,
Hennepin County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Robert J. Kressel
Judge of U.S. Bankruptcy Court